

Multistate Tax Commission



TO: PPWG – UNIFORMITY COMMITTEE LIAISON GROUP
(SEE ATTACHED LIST)

FROM: ALAN H. FRIEDMAN, CONVENOR

SUBJECT: PREPARATION FOR FEBRUARY 17, 1999
TELECONFERENCE

DATE: FEBRUARY 9, 1999

I have attached my first draft (Draft of 2/9/99) of a proposal to define the “Contribution or Dependency” test for determining a unitary business enterprise for your consideration. But, I did want us to focus on specific language at our February 17th conference call. **REMEMBER YOU ARE TO CALL 703-736-7307 at the appointed time – 1:30 PM (EASTERN) - and ask for the MTC teleconference, hosted by Alan Friedman.**

Those of you that know me know I have “no pride of authorship” at stake. I invite all of you not only to hack away at the language I have submitted, but also to provide suggestions of your own. It would also be of great help if you could submit your written comments and suggestions by Monday, February 15th so they can be distributed before the call on the 17th. You should e-mail or fax your comments directly to me.

Talk to you all on the 17th,

Alan H. Friedman
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DRAFT 2/9/99

PROPOSED DEFINITION OF CONTRIBUTION/DEPENDENCY TEST

A business entity (including a division or segment thereof) that is doing business within this state is a member of a unitary business enterprise with another business entity when (1) the operation of either entity, division or segment contributes to or is dependent upon the operation of the other; and (2) either business entity directly or indirectly holds an ownership interest in the other; or each business entity is directly or indirectly owned by another person or business entity.¹

The determination of whether the operation of a business entity, division or segment contributes or depends upon the operation of another shall be determined by the facts and circumstances of each case. It shall be presumed, subject to rebuttal, that sufficient contribution and dependency exists between business entities, divisions and segments thereof to form a unitary business enterprise when one or more of the following factors are present:

1. when the principal activities of the entities or divisions or segments are in the same general line of business; or
2. when the entities, divisions or segments are engaged in different steps of a vertically structured enterprise; or
3. when there exists a strong centralized management among the entities, divisions or segments; or
4. when divisions or segments are in the same entity.

I refer the group to the following references that address the contribution/dependency test:

Adams Express Co. v. Ohio State Auditor, 165 U.S. 194 (1897)

Edison California Stores v. McColgan, 30 Cal.2d 472, 183 P.2d 16 (1947)

Appeal of Power-Line Sales, Inc., California BOE, No. 90-SBE-016 (December 5, 1990)

¹ Please note that we are not addressing here the requisite ownership interest required for “combination” purposes. The ownership requirement here is used solely for the purpose of requiring some ownership between the entities, divisions and segments for purposes of apportionment of income.

In the Matter of the Appeal of A.M. Castle & Co., 783 P.2d 1286
(Kan 1989)

Montana Adm. Rule Section 42.26.205

Kansas Reg. 92-12-72

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